

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on the)
Commission's Own Motion to Assess and) R. 05-04-005
Revise the Regulation of)
Telecommunications Utilities.)

Rulemaking for the Purposes of Revising)
General Order 96-A Regarding Informal) R.98-07-038
Filings at the Commission.)

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK (TURN) ON
THE PROPOSED DECISION OF COMMISSIONER CHONG ADOPTING
PROCEDURES FOR DETARIFFING AND CLARIFYING ADVICE LETTER
RULES**

Dated: August 20, 2007

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I. INTRODUCTION

The Utility Reform Network files these Reply Comments in response to parties' Opening Comments on both the Proposed Decision in Phase 2 of the Uniform Regulatory Framework as well as the Proposed Decision addressing changes to General Order 96-B.

II. DISCUSSION

A. Consumer Protections Are Critical In A Flexibly Priced or Detariffed Environment

Several carriers question the need for the additional consumer protection requirements found in the Proposed Decision. TURN supports these consumer protections as not only required pursuant to Public Utilities Code §495.7, but also good public policy.

Some carriers criticize the requirement to archive retail rates for a period of three years as inefficient for the carrier.¹ Instead, the ILECs suggest that a customer should have to call their carrier to get the information on previous rates and terms. TURN strongly disagrees. For either an existing customer trying to get information about a service they have but is no longer available to the public or a potential customer researching service options, the requirement to call for information would be a huge barrier and provide an inappropriate marketing opportunity for the carrier. A web archive also benefits other interested parties such as TURN and the Commission staff who may be trying to research trends in the marketplace. An archive is essential when an Advice Letter is effective upon filing thereby eliminating any time to analyze the impact of the change. It is even more essential in a detariffed environment where there is no paper trail.

These carriers may question the need for this archive, but do not support the argument that creating the archive is in any way burdensome. AT&T seems to suggest that their customer service representatives will have the archived material at their fingertips when customers call to request it. If so, it seems like a relatively simple step to make that information available to the public directly. If not, and the customer has to wait for any period of time for the information to be sent to them then the barrier for

¹ AT&T URF Opening at p. 8; Verizon URF Opening at p. 3; Sprint/Nextel URF/GO96 Opening at p. 15.

the customer is even higher. G.O. 96-B currently requires a web posting of tariffs and requires the carrier to make available old tariff information. It is ironic that Verizon is complaining about this requirement since it currently offers a tariff archive in the Regulatory Documents section of its website. While the Proposed Decision would require Verizon to broaden out this capability, it nonetheless already exists on Verizon's site. A properly designed website with clear separation from the current and archived material would essentially eliminate customer confusion. This is a vital protection that must be maintained.

AT&T and Sprint suggest that the entire web posting requirement should not be imposed on wireless carriers.² At the beginning of this proceeding, the Commission stated that this proceeding would change the structure of regulation, affecting non-Respondent carriers and suggesting that non-respondent utilities should participate to affect the outcome of the proceeding.³ Wireless carriers should have been well-aware of potential impact this proceeding may have. While the Commission can ultimately decide the proper location of the web-posting requirement in either G.O. 168 or G.O. 96-B, the important point is that the Commission has the authority and the record to impose this requirement on wireless carriers. The findings in the Bill of Rights proceeding and D.06-03-013 that existing laws may protect consumers predated the Commission's decision to create an environment where important residential and small business services are flexibly priced and possibly even detariffed, thus creating the need for a different information source. Also, in light of the Commission's finding in D.06-08-030 that wireless, cable and VoIP services are substitutes for wireline service, it makes perfect sense to require these substitutes to also provide rate and term information to consumers.

SureWest and Joint Commentors oppose the limitations on unilateral contract changes, suggesting that contract law will adequately protect consumers.⁴ This is incorrect. First, PU Code §495.7 requires additional protections above and beyond common law in a detariffed environment. Second, and perhaps most relevant, common law has not protected consumers against this unfair practice to date. Consumers

² AT&T GO-96B Opening at p. 5; Sprint/Nextel URF/GO-96B Opening at p. 10.

³ Order Instituting Rulemaking, R.05-04-005, April 14, 2005 at p. 5-6, "All providers of regulated intrastate telecommunications services are welcome to participate in this proceeding. . . as are cable companies and providers of Internet Protocol."

⁴ SureWest URF/GO-96 Opening at p. 6; Joint Commentors URF Opening at p.2-3.

are constantly subject to more restrictive unilateral changes in contracts because the contracts they signed required them to consent to such changes up front or agree to unfair notice terms of such changes. Additional protections are required, legal and fair.

B. Business Customers Have Diverse Needs

Some carriers suggest in their comments that business customers should not have the same protections as residential customers. For example AT&T requests language to allow business customer to contract away their rights to receive proper notice of rate increases and changes in terms.⁵ CalTel takes issue with the requirement to post rates and terms for services offered to business customers.⁶ Under the current circumstances, TURN disagrees with these proposals to limit the rights of a business owner. Both parties discuss the contracting process as if it is an equal bargaining arrangement, but for the vast majority of small business owners that is not the case. The results of most of these “negotiations” are contracts of adhesion just as for residential customers. Make no mistake, AT&T is not suggesting that these independently negotiated terms will provide for better notice the customer. Instead, they are hoping to get away with minimal notice requirements such as the current practices by some carriers of posting the notice on a web site or requiring a customer to provide up-front consent to unilateral changes with no or minimal notice. CalTel also hopes to avoid web posting requirements suggesting that it will discourage detariffing, although the same requirement is being proposed for both tarified and detarified services.

To explicitly exempt business services from some of these requirements (even if it is purportedly a mutual decision) leaves many small business unprotected and it sets a dangerous precedent for residential consumers. Until the concept of a “business customer” is more concretely defined taking into account the sophistication of the types of business customer these proposals should be rejected.

C. Commission Should Not Make The Same Mistake Twice By Allowing The Elimination of an Existing State or Federal Law Through Detariffing

AT&T and SureWest raise concerns about language in Ordering Paragraph 3 of the Proposed Decision, specifically subsection (f) which excludes from detariffing those tariffs that contain obligations

⁵ AT&T URF Opening at p. 11, AT&T G.O. 96B Opening at p. 4.

⁶ CalTel URF/O96B Opening at p. 5.

as a Carrier of Last Resort or other obligations under state and federal law.⁷ The carriers suggest that since obligations under state and federal law can also be found in statutes they do not need to be in tariffs. TURN urges caution in approaching this issue, lest the Commission make the same mistake it did with obligations imposed through a complaint proceeding. While it may be that some obligations under state and federal law can be found *and enforced* independently from the tariff requirements, it may be that other obligations were directed to be and are only in the tariffs. The language in OP 3 currently puts the burden squarely where it should be: on the carrier requesting detariffing to demonstrate the language it wants to eliminate will not have the unintended consequence of eliminating a legal right or obligation unrelated to pricing flexibility. It should remain as is.

D. Carriers' Appetite For Deregulation Appears to be Insatiable

Several of the carriers' comments demonstrate the slippery slope of deregulation where the carriers will not be satisfied until due process rights for consumers are reduced to zero.

Despite the radical changes proposed by the Proposed Decision which would eliminate substantial amounts of responsibility currently given to Commission Staff, AT&T suggests one of the few remaining substantive duties of Staff should be further limited so that staff cannot reject an already effective advice letter.⁸ Their argument demonstrates how pernicious the "effective upon filing" structure will be by emboldening carriers to barge ahead with business plans and then become indignant if told those plans are illegal or unfair in some manner. Rule 7.4 merely allows Staff to reject an advice letter without prejudice that it finds should not have been filed as an advice letter but instead requires a formal proceeding under the Rules. This is not an unlawful delegation of duties since under the proposed rules Staff has very specific criteria to apply to determine if an advice letter is improperly filed. The Commission is clear that allowing an advice letter to go into effect upon filing is a benefit given to the carrier balanced by the right of Staff or a party to protest and quickly fix an advice letter filed in the

⁷ AT&T URF Opening at p. 6. SureWest URF/GO-96B Opening at p.5. AT&T's Opening Comments on the GO-96B PD also addresses this issue at p. 3 and suggests revised language for Rule 5 of the draft Telecommunications Rules that would be acceptable to TURN and could be incorporated into Ordering Paragraph 3 of the URF PD.

⁸ AT&T GO-96B Opening at p. 8. Contrast with DRA's URF Opening Comments at p. 11 that suggest carriers have every incentive to file advice letters in the wrong tiers with hopes that Staff won't catch it in time.

wrong tier. If the *Commission* must go through a lengthy formal process to determine if an advice letter is filed in the wrong tier and reject the advice letter as AT&T suggests, there is no telling what harm may come to consumers while that erroneous advice letter is in effect. This is unacceptable. AT&T's suggestion must be rejected.

SureWest advocates that the few remaining grounds upon which protests to advice letters can be based should be narrowed even further. SureWest seems to suggest parties could not protest an advice letter filed in the wrong tier or one that should be filed as an Application, something the Proposed Decision clearly allows. SureWest also points out that there should be no protest based on a just and reasonable or non-discriminatory basis, an issue TURN and DRA address in their Opening Comments.

TURN is also incredulous that AT&T would take issue with the simple requirement to provide directories to public libraries.⁹ The fact that they already deliver these directories door-to-door in neighborhoods suggests that the incremental cost of dropping one off at the library must be extremely small. After all the freedoms they have been given, the concept that they are not willing to perform such a simple act demonstrates the power they now believe they have over this Commission and the disregard for any obligation to their customers.

Finally, although TURN recognizes the problem raised by Verizon regarding the treatment of Basic Service advice letters after January 2009, it would not support the proposed changes to Rule 7.1.¹⁰ The Rules as adopted must be clear that current requests for changes in Basic Service, although very limited due to the price freeze in place, will be treated as a Tier 3 Advice Letter.

III. CONCLUSION

For the reasons stated above and in TURN's Opening Comments on the URF and G.O. 96 Proposed Decisions there are serious flaws that must be addressed before carriers and the Commission are allowed to move forward.

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⁹ AT&T GO-96B Opening at p. 2; Small LECs URF Opening at p. 3 also take issue with this requirement.

¹⁰ Verizon Opening GO-96B at p. 5

Dated: August 20, 2007

Respectfully submitted,

/S/

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CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On August 20, 2007 I served the attached:

**REPLY COMMENTS OF THE UTILITY REFORM NETWORK (TURN) ON THE
PROPOSED DECISION OF COMMISSIONER CHONG ADOPTING PROCEDURES
FOR DETARIFFING AND CLARIFYING ADVICE LETTER RULES**

on all eligible parties on the attached lists to **R.05-04-005**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this August 20, 2007, at San Francisco, California.

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